IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case No.274 of 2000

The Commissioner of Gift Tax,
Tamil Nadu-III, Chennai-34. ..Appellant

Vs

Late C.V. CT.Thevanai Achi,
By Shri C.Venkatachalam,
By Father & Guardian
Shri V.Chidambaram, Chennai-18. ..Respondent

Reference under Section 26 of the Gift Tax Act, against the order of the Income Tax Appellate Tribunal, Madras, 'A' Bench in G.T.A. No.9 (Mds) of 1981 for the assessment year 1975-76 against G.T.Appeal No.1/80-81/CC.II(3) dated 11.12.1980 Assessment Year 1975-76 on the file of the Commissioner of Gift Tax Appeal III, Madras 600 034 Order dated 31.3.80 in G.I.No.752-T/75-76/GT of the Gift Tax Officer, City Circle II(3), Madras 6 Order dated 25.10.1989 made in R.A.No.413(Mds) of 1982-AY-1975-76 of the Income Tax Appellate Tribunal, Madras Commissioner of Income Tax (Appeals III), Madras 34 Order dated 23.7.1979 made in ITA.19/78-79/CC.II(3)/CA.III AY-1975-76 Order dated 28.1.1982 made in GTA.9/Mds/1981 (AY 1975-76) in Income Tax Tribunal, Madras - Order of the Assistant Controller of Estate Duty(2), dated 31.10.1981.

For Appellant : Mr.J.Narayanaswamy

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JUDGMENT

(Judgment of the Court was delivered by P.P.S.Janarthana Raja, J.)

The Income Tax Appellate Tribunal referred the following question of law under the direction of this Court in T.C.P. No.372 of 1983 dated 07.03.1989, at the instance of the Revenue for opinion of this Court.

"Whether the Appellate Tribunal was justified in holding and had valid materials to hold that the gift

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of jewellery on 19.8.1974 made by late C.V.C.T. Thevani Achi was made in contemplation of death and hence exempt under Section 5(1) (xi) of the Gift Tax Act?"

2. The facts leading to the above question of law are as under:

i) In this case, though there are two gifts, one a cash gift of Rs.4,500/- made on 10.06.1974 and the other gift of jewellery made on 19.08.1974, the exemption is claimed only in respect of the jewellery gift. Late C.V.CT.Thevanai Achi had two sons, one Shri C.V.CT.Venkatachalam Chettiar and another C.V.CT.R.Ranganathan Chettiar. Shri C.V.CT.Venkatachalam Chettiar has a son by name C.V.CT.Chidambaram Chettiar and Shri C.V.CT.Chidambaram Chettiar has a son who is Master C.Venkatachalam. Thus, in relation to Master C.Venkatachalam, late C.V.CT.Thevanai Achi is the great grandmother. It appears that late C.V.CT.Thevanai Achi had in her possession, jewelleries worth Rs.81,500/-. These jewelleries, of course, had subsequently been valued at Rs.2,85,969/-. Shri V.Chidambaram, grand son of Thevanai Achi and son of C.V.CT.Venkatachalam Chettiar was married to Smt.Seethai Achi, daughter of Sri M.A.Chidambaram Chettiar. There were no issues to them for about 10 years. Thereafter, on 18.03.1974, Master C.Venkatachalam was born to them in a nursing home at London. When the mother and child came to India, there was a celebration known as "Vilaiyattupoti Vevu" in their house on 06.06.1974. A further celebration took place in the ancestral house at Kanadukathan, a few days later, which was attended by a number of friends and relatives. It was on the occasion of the later celebration, Thevanai Achi placed the key of the iron safe in which the jewelleries were kept, in the hands of the child C.Venkatachalam, and blessed the child on 19.08.1974. She, thereafter, filed a gift tax return dated 19.08.1974 with the 5th Gift Tax Officer, City Circle-I, Madras, on 20.08.1974. In this return, it was stated that the cash of Rs.4,500/- was gifted on 10.06.1974 and jewellery of the value of Rs.81,000/- was gifted on 19.08.1974. The name of the donee was given as C.Venkatachalam, minor son of Sri V.Chidambaram. Smt.Thevanai Achi had affixed her left hand thumb impression in the declaration of the return and the same was witnessed or attested by Shri K.Thiruvenkatachari, the Accountant. Later, a revised return was filed by Shri V.Chidambaram by a letter dated 27.06.1975. In this letter it was stated as follows:

> "Late Mrs.C.V.CT.Theivanai Achi (who expired on 28.08.1974) made a gift of her jewelleries to my Minor son C.Venkatachalam and has filed a gift tax return with you on 19.08.1974.
>
> Consequent to the valuation of the said jewelleries, for wealth tax purposes, I am filling a revised return on behalf of the donee admitting the value determined by the valuer. Approved valuer's certificate also is enclosed."

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ii) By a letter dated 25.03.1976, Shri V.Chidambaram drew the attention of the Assistant Controller of Estate Duty to the fact that Smt. Thevanai Achi expired on 28.08.1974. He had also stated that her properties consisting of jewelleries and cash amounting to Rs.85,500/- had been gifted on 19.08.1974. He had also stated that Rs.8,575/- had been paid as gift tax. He further stated that gift tax proceedings are still pending with the Gift Tax Officer, City Circle-I(5), Madras. He also stated that "Since the gift tax paid or that may become payable would exceed the estate duty, I had requested you my by letter dated 13-8.75 to grant time to file the return till the completion of the gift tax proceedings. A copy of my letter is also enclosed for ready reference. I am contacting the Gift Tax Officer to complete the assessment early in order to facilitate the estate duty proceedings. I shall file the return as soon as the gift tax proceedings is completed." The earlier letter referred to, was dated 31.12.1975 in which also he had asked for time till the completion of the gift tax proceedings. Thereafter, on 16.2.1977, M/s.Palaniappan and Viswanathan, C.As., wrote to the Income Tax Officer as under:

> "The above deceased has filed a gift tax return with you in respect of the gift made by her to Master C.Venkatachalam on 19.08.1974. She expired on 28.08.1974 and the gift was in contemplation of her death. Now Donee's father and guardian has been advised that the deceased need not have filed the gift tax return as the gift made by her was exempt under Section 5 (1) (xi). We therefore, request you to close the file as N.A."

By an order passed on 31.03.1980, the Gift Tax Officer completed the assessment accepting the gift return of Rs.2,90,469/- and levied a tax of Rs.52,010/-. In this order, of course, there was no discussion as to the contentions raised by the Chartered Accountant in his letter dated 11.02.1977. The short contention that arises for consideration is whether the gift made by C.V.CT.Thevanai Achi on 19.08.1974 was exempt under Section 5(1)(xi) as made in contemplation of death of Thevanai Achi. It was the assessee's case that it was so. He relied on the fact that Thevanai Achi was 90 years old. On 19.08.1974, when the gift was made, she was also ill on the same date. The child was taken to her on 19.08.1974 for being blessed by her. On this occasion, she placed the key of the iron safe in the hands of the child and the iron safe was found to contain the jewelleries gifted. The gift, was thus complete when the key was placed in the hands of the child. Being old and on her death bed, it goes without saying that the gift was in contemplation of death. In fact, she also passed away on 28.08.1974. The Gift Tax Officer rejected the claim of the assessee.

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iii) On assessee's appeal, Commissioner of Gift Tax (Appeals) rejected the plea that it was a gift in contemplation of death as he was of the view that old age of 90 years and death within a week of the gift will not establish the ingredient of expectation to die shortly of her illness, which is so essentially an ingredient to establish a gift in contemplation of death. The Commissioner (Appeals) then proceeded to observe that the gift was made on the occasion when the child, that was born to her grandson after a period of ten years of married life, was taken to her for obtaining her blessings and that the motive to make the gift, therefore was directly relatable to the happiness derived by her on seeing her great grand child. He also found that the conduct of the parties evidenced by the furnishing of returns and writing of letters supported his conclusion that it was only an ordinary taxable gift. Aggrieved by the above order, the assessee preferred appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal held that gift was a gift in contemplation of death and not taxable. The learned counsel for the Revenue submitted that the gift was made only on account of natural love and affection and on account of the happiness derived by the donor, seeing her grand child. Further it was submitted that this was a gift, pure and simple, taxable in nature made on the occasion of the "Vilaiyattupotti Vevu".

3. We heard the counsel. A person of 90 years old will always be in the belief that he / she will shortly die of illness caused by old age. There may be exceptional cases where persons of 90 years will hope to live long. But the generality is otherwise. The word 'gifts' made in contemplation of death has the the same meaning as in Section 191 of the Indian Succession Act, 1925. A gift is said to be made in contemplation of death where a person, who is ill and expect to die shortly of his illness, delivers to another the possession of any movable property to keep as gift in case of the donor shall die of that illness. So, the fact of 90 years of age itself lead to the conclusion that the donor expects to die shortly. All the more so in this case, where the donor a week later died on 28.08.1974, it is not the case of the Revenue that she died in accident. It was a natural death caused by old age. So on these facts of age and the date of death, it can be held that the ingredient that the donor at the time of gift expected to die shortly of illness. If that is satisfied, it admittedly and automatically follows that a gift is in contemplation of death. We have seen that the Tribunal had accepted the supporting evidence i.e., Medical Certificate of the Doctor, which is as follows:

> "Dr.P.V.Ananthanarayanan,
> Regd. Medical Practitioner,
> Registration No.9260
>
> I have been attending to Mrs.C.V.CT.Thevanai Achi for her hypertension when I was attached to Government

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Hospital, Kanadukathan. After I left Kanadukathan in December 1964 and settled down at Karaikkudi, I used to attend on her whenever I was summoned to see her. Sometime in the middle of 1974, her pressure increased and she also developed a mind paralysis of right side of her body (Right Sided Hemiplegis). Though the response to treatment was fairly satisfactory, her condition suddenly worsened about the end of July '74.

At that stage, the response to treatment was poor and I informed her grand son Mr.Chidambaram accordingly and that she may not survive for more than a month or so and that he can inform his close relations regarding her condition.

From the middle of August, the illness increased but she was fully conscious until her death which occurred in 1974 August last.

Sd/ P.V.Ananthanarayanan"

The medical certificate was an additional material supporting the case of the assessee. Even without it, the assessee had established the case. The medical certificate also proves the question beyond the realm of doubt and controversy. The findings recorded by the Tribunal are therefore based on the material and evidence on record and do not suffer from any legal infirmity.

4. In view of the foregoing conclusions, we hold that the gift was a gift in contemplation of the death and not taxable. Hence, we answer the questions in favour of the assessee, against the Revenue. Accordingly, the tax case is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
1. The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai 90.

2. The Commissioner of gift Tax,
Tamil Nadu III, Chennai 34.

3. The Gift Tax Officer,
City Circle II(3),
Madras 6.

+ 1 CC to Mr. Pushya Sitaraman, Senior Standing Counsel Income Tax Department SR NO 5762

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